

ENTERED

December 20, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

FRANCISCO MOLINA,

Petitioner,
VS.

FEDERAL BUREAU OF PRISONS, *et al*,

Respondents.

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CIVIL NO. 2:18-CV-416

ORDER

The Court is in receipt of Magistrate Judge B. Janice Ellington's Memorandum and Recommendation ("M&R"), Dkt. No. 17. Petitioner Francisco Molina ("Molina") has not filed objections. Molina alleges that the Federal Bureau of Prison's ("BOP") incorrectly calculated his sentence and filed this 28 U.S.C. § 2241 petition. Dkt. Nos. 1, 17.

BOP made a motion to dismiss which the Magistrate Judge treated as a motion for summary judgment. Dkt. No. 17 at 1. The M&R recommends granting summary judgment and denying the petition on the merits or alternatively dismissing the petition without prejudice for failure to exhaust administrative remedies. Dkt. No. 17 at 9.

As the M&R states "Molina concedes in his petition that he has not exhausted his administrative remedies, and he has not provided any other evidence to the contrary. (D.E. 1 at 2)." Dkt. No. 17 at 7. The M&R correctly points out the administrative remedy procedure for incarcerated people to follow before filing in court. Dkt. No. 17 at 6.

The Fifth Circuit has determined that a "§ 2241 petitioner 'must first exhaust his administrative remedies through the Bureau of Prisons.'" *Rourke v. Thompson*, 11 F.3d 47, 49 (5th Cir. 1993).

The Court therefore **ADOPTS** the M&R, Dkt. No. 17 and **DISMISSES** Molina's petition for failure to exhaust administrative remedies. The Court directs the Clerk of the Court to close the case.

SIGNED this 20th day of December, 2019.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', is written over a horizontal line.

Hilda Tagle
Senior United States District Judge